

Message Text

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SUBJECT: GSP IMPLEMENTATION; "SUBSTANTIALLY TRANSFORMED"

REF: HONG KONG 00829

1. THE U.S. CUSTOMS SERVICE HAS ISSUED A RULING
(TD 76-100) INTERPRETING THE TERM "SUBSTANTIALLY
TRANSFORMED," AS USED IN CFR PART 10, PARA. 177 (A) (2),
REGARDING GSP ELIGIBILITY FOR ARTICLES IMPORTED INTO
THE U.S. FROM BENEFICIARY DEVELOPING COUNTRIES.
FULL TEXT SEPTEL.

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2. SECTION 10.177 OF THE CUSTOMS REGULATIONS DEFINES

THE WORDS "PRODUCED IN THE BENEFICIARY DEVELOPING COUNTRY" AS USED IN SECTION 503 OF THE TRADE ACT OF 1974. THE REGULATION PROVIDES THAT THE COST OR VALUE OF THOSE CONSTITUENT MATERIALS WHICH HAVE BEEN SUBSTANTIALLY TRANSFORMED INTO A NEW AND DIFFERENT ARTICLE OF COMMERCE IN THE BENEFICIARY DEVELOPING COUNTRY SHALL BE INCLUDED IN THE COMPUTATION OF THE 35 PERCENT CRITERION FOR GSP.

3. ACCORDING TO THE CUSTOMS RULING, A COMPANY WHICH IMPORTS A PRECIOUS STONE IN RAW CONDITION, THEN CUTS AND POLISHES IT INTO A FINISHED STONE FOR SETTING IN AN ARTICLE OF JEWELRY MAY COUNT THE FULL VALUE OF THE TRANSFORMED JEWELRY ARTICLE TOWARD THE 35 PERCENT CRITERION. NO SEPARATE TRANSACTIONS ARE REQUIRED. HOWEVER, THE FINISHED ARTICLE MUST BE EXPORTED DIRECTLY TO THE U.S. FROM THE BDC.

4. THE CUSTOMS RULING STATES THAT QUOTE MATERIALS PROCESSED INTO CERTAIN ARTICLES MAY BE CONSIDERED SUBSTANTIALLY TRANSFORMED CONSTITUENT MATERIALS UNQUOTE.

5. HOWEVER, THE RULING ALSO STATES THAT QUOTE ARTICLES PRODUCED BY THE JOINING AND FITTING TOGETHER OF COMPONENTS ARE NOT CONSIDERED SUBSTANTIALLY TRANSFORMED CONSTITUENT MATERIALS. ARTICLES OF THIS KIND MAY WELL HAVE BEEN SUBSTANTIALLY TRANSFORMED, BUT THEY ARE NOT PRODUCED FROM SUBSTANTIALLY TRANSFORMED CONSTITUENT MATERIALS. UNDER THIS CRITERION, PARTIALLY COMPLETED

COMPONENTS WHICH ARE COMPLETED AND ASSEMBLED IN THE BENEFICIARY DEVELOPING COUNTRY INTO FINISHED ARTICLES OR COMPONENTS DO NOT QUALIFY AS SUBSTANTIALLY TRANSFORMED CONSTITUENT MATERIALS. BY THE SAME TOKEN, MOST ASSEMBLY OPERATIONS AND OPERATIONS INCIDENTAL TO ASSEMBLY WILL NOT QUALIFY UNQUOTE.

6. MATERIALS IMPORTED FROM THE U.S. FOR PROCESSING INTO ANOTHER ARTICLE ARE CONSIDERED FOREIGN MATERIALS FOR THE PURPOSES OF GSP. THEY CANNOT BE COUNTED TOWARD THE UNCLASSIFIED

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35 PERCENT CRITERION UNLESS THEY HAVE BEEN SUBSTANTIALLY TRANSFORMED BEFORE BECOMING CONSTITUENT ELEMENTS OF THE ELIGIBLE ARTICLE. CONSEQUENTLY, THE VALUE OF ELECTRONIC COMPONENTS WHICH ARE IMPORTED FROM THE U.S. AND ASSEMBLED, BUT NOT SUBSTANTIALLY TRANSFORMED, INTO AN ARTICLE FOR EXPORT TO THE U.S. CANNOT BE COUNTED TOWARD THE 35 PERCENT CRITERION FOR DUTY-FREE ENTRY UNDER GSP.

7. HOWEVER, UNDER ITEM 807.00 OF THE TARIFF SCHEDULES OF THE UNITED STATES, THE U.S. COMPONENTS OF A MANUFACTURED ARTICLE ASSEMBLED ABROAD CAN ENTER THE U.S. DUTY FREE. UNDER THIS PROVISION, DUTIES MUST BE PAID ON THE FULL VALUE OF THE IMPORTED ARTICLE, LESS THE COST OR VALUE OF THOSE PRODUCTS OF THE UNITED STATES MEETING THE SPECIFIED CRITERIA.

8. THE EXAMPLES PRESENTED HERE ARE ILLUSTRATIVE ONLY. MORE SPECIFIC INTERPRETATIONS OF THE TERM "MATERIALS"

REGARDING SUBSTANTIAL TRANSFORMATION AND OF AN ARTICLE'S QUALIFICATIONS UNDER THE 35 PERCENT CRITERION SHOULD BE REQUESTED BY INTERESTED PARTIES IN ACCORDANCE WITH PART 177 OF THE CUSTOMS REGULATIONS (19 CFR PART 177).
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